

APPEAL NO. 031459
FILED JULY 24, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 12, 2003. The hearing officer determined that the respondent (carrier) had not waived the right to dispute compensability of the claimed injury; that the carrier contested compensability in accordance with Section 409.021 (both stipulated facts); that the appellant (claimant) did not sustain a compensable injury on _____; and that the claimant has not had disability.

The claimant appeals all of the issues, including the stipulated fact that the carrier had timely contested compensability in accordance with Section 409.021. The carrier responded, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant had been treating for low back pain months before the alleged _____, date of injury (DOI). The claimant's doctor had ordered x-rays on March 29, 2002, and an MRI was performed on April 4, 2002. The claimant testified that he sustained a new and "different" injury on _____, lifting a box at work. In dispute is whether the MRI was ordered before or after the DOI. The claimant told at least three doctors that he injured his back riding an exercise cycle. The claimant continued working after _____, until about May 1, 2002, when the claimant said his back pain became unbearable and he was unable to continue working. The claimant subsequently sought treatment with a chiropractor but did not tell that doctor of his prior back complaints.

The evidence was in conflict and the hearing officer found that the claimant was "not persuasive" giving some of his reasons. The hearing officer weighed the credibility and inconsistencies in the evidence and the hearing officer's determination on the issues is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant, on appeal, complains that the hearing officer did not find a date of written notice to the carrier or a date that a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) was filed by the carrier. We note, however, that the claimant, on the record, agreed to withdraw the carrier waiver issue (page 43, CCH transcript), and that the hearing officer entered agreed-upon stipulations that the carrier had timely contested compensability pursuant to Section 409.021. The claimant cannot now complain that the hearing officer failed to make additional factual determinations regarding the stipulated facts that the carrier had timely contested compensability.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge